

THE TIDRICK LAW FIRM LLP
STEVEN G. TIDRICK, SBN 224760
JOEL B. YOUNG, SBN 236662
1300 Clay Street, Suite 600
Oakland, California 94612
Telephone: (510) 788-5100
Facsimile: (510) 291-3226
E-mail: sgt@tidricklaw.com
E-mail: jby@tidricklaw.com

Attorneys for Individual and Representative
Plaintiff JANE ROE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANE ROE, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

JOSE TORRES L.D. LATIN CLUB BAR,
INC. *et al.*,

Defendants.

Civil Case No. 3:19-cv-06088-LB

**[PROPOSED] ORDER GRANTING
(1) PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT,
AND (2) PLAINTIFF'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND
COSTS AND SERVICE AWARD, AND
JUDGMENT**

The Honorable Laurel Beeler

Date: August 27, 2020

Time: 9:30 A.M.

Courtroom: Courtroom B, 15th Floor
450 Golden Gate Avenue
San Francisco, California

Judge: The Honorable Laurel Beeler

1 Plaintiff's Motion for Final Approval of Class Settlement and Plaintiff's Motion for
 2 Award of Attorneys' Fees and Costs and Service Award (the "Motions") came on regularly
 3 for hearing on August 27, 2020, in the United States District Court for the Northern District of
 4 California, the Honorable Laurel Beeler presiding. All parties were represented by counsel.

5 Having considered the memoranda and declarations, oral arguments of counsel, and
 6 the relevant statutory and case law, the Court GRANTS Plaintiff's Motions and orders and
 7 finds as follows, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), and
 8 Rule 23(c) and (e) of the Federal Rules of Civil Procedure ("Rule 23"):

9 **Introduction**

10 1. On May 14, 2020, the Court granted preliminary approval of the class action
 11 settlement agreement ("Settlement Agreement" or "Settlement") (ECF No. 14). *See* ECF No. 23
 12 (Preliminary Approval Order).¹ Capitalized terms throughout this order have the definitions given
 13 them in the Settlement Agreement.

14 **Jurisdiction**

15 2. The Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. The
 16 Court has supplemental jurisdiction over the California state law claims because they are so
 17 related to this action that they form part of the same case or controversy under Article III of the
 18 United States Constitution.

19 **Notice to the Class**

20 3. The Court previously approved the class notice and plan, and ordered that notice
 21 be mailed to the class. *See* Preliminary Approval Order, at 11:19-12:7. The Court subsequently
 22 ordered additional text message notice to 26 settlement class members for whom Defendant
 23 lacked mailing addresses. *See* Stipulation and Order Regarding Additional Notice to Settlement
 24 Class Members (ECF No. 27). The Court finds that the Settlement Administrator provided notice
 25 consistent with the approved plan. *See* Declaration of Stephen Gomez of CPT Group Inc. with
 26 Respect to Settlement Administration ("Gomez Decl."), ¶¶ 8-12. The notice provided constituted

27 ¹ Record citations refer to material in the Electronic Case File ("ECF"); pinpoint citations are to
 28 the ECF-generated page numbers at the top of the documents.

1 the best notice practicable under the circumstances and met the requirements of due process and
 2 Rule 23 of the Federal Rules of Civil Procedure. *See Silber v. Mabon*, 18 F.3d 1449, 1453-54 (9th
 3 Cir. 1994).

4 **Certification of the Class**

5 4. The Court confirms its previous certification of the Class as defined in the
 6 Settlement Agreement for settlement purposes only pursuant to Federal Rules of Civil Procedure
 7 23 and 29 U.S.C. § 216(b).

8 5. The Class consists of all individuals who all individual(s) who, during the Class
 9 Period, performed as exotic dancers at Jose Torres L.D. Latin Club Bar, Inc. d/b/a Hanky Panky
 10 Club (“the Nightclub”) pursuant to an “independent contractor” agreement. The Class Period is
 11 from December 4, 2013 through May 14, 2020. *See* Settlement Agreement § 5.

12 **Class Representative, Class Counsel, and Claims Administrator**

13 6. The Court confirms its previous appointment of Plaintiff Jane Roe as the Class
 14 Representative, finding that she has claims that are typical of members of the class generally and
 15 that she is an adequate representative of the other members of the class. *See* Preliminary Approval
 16 Order, at 11:9-11.

17 7. The Court confirms its previous appointment of Steven G. Tidrick, Esq. and Joel
 18 Young, Esq. of The Tidrick Law Firm LLP as Class Counsel, finding that they have sufficient
 19 qualifications, experience, and expertise in prosecuting class actions. *See* Preliminary Approval
 20 Order, at 11:12-15. The Court finds that they have represented the class adequately.

21 8. The Court confirms its previous appointment of CPT Group, Inc. as the settlement
 22 administrator. *See* Preliminary Approval Order, at 11:16-17.

23 **No Objections to the Settlement**

24 9. No objections to the settlement were received or were filed with the Court. *See*
 25 Gomez Decl., ¶ 14.

26 **Final Approval of Settlement**

27 10. The Settlement Agreement (Docket No. 14), and the notice to class members (Ex.
 28 1 to Tidrick Decl. –ECF No. 17-1 at 8-16; Gomez Decl. Exs. A and B), which the Court

1 preliminarily approved as fair, adequate, and reasonable, and within the range of possible
 2 approval, are approved, and the definitions used therein are adopted for use herein as fair and
 3 reasonable as set forth herein.

4 11. This ruling is based on federal common and statutory law, including 29 U.S.C.
 5 § 216(b) and the Federal Rules of Civil Procedure, as well as federal and other authority,
 6 including the Federal Judicial Center's Manual for Complex Litigation (4th ed. 2004).

7 12. Settlement is a strongly favored method for resolving disputes, particularly "where
 8 complex class action litigation is concerned." *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
 9 1276 (9th Cir. 1992); *see, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). A
 10 court may approve a proposed class-action settlement only "after a hearing and on finding that it
 11 is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The court need not ask whether the
 12 proposed settlement is ideal or the best possible; it determines only whether the settlement is fair,
 13 free of collusion, and consistent with the named plaintiff's fiduciary obligations to the class.
 14 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026-27 (9th Cir. 1998). In *Hanlon*, the Ninth
 15 Circuit identified factors relevant to assessing a settlement proposal: 1) the strength of the
 16 plaintiff's case; 2) the risk, expense, complexity, and likely duration of further litigation; 3) the
 17 risk of maintaining class-action status throughout trial; 4) the amount offered in settlement; 5) the
 18 extent of discovery completed and the stage of the proceeding; 6) the experience and views of
 19 counsel; 7) the presence of a government participant; and 8) the reaction of class members to the
 20 proposed settlement. *Id.* at 1026 (citation omitted). *See also Churchill Village, LLC v. General*
 21 *Electric*, 361 F.3d 566, 575 (9th Cir. 2004). In determining whether the Settlement should be
 22 approved, the Court has considered those factors. The Court also has considered whether the
 23 Settlement is "the product of collusion among the negotiating parties." *Id.* at 576.

24 13. The Court finds that the Settlement is a fair and reasonable resolution of a *bona*
 25 *fide* dispute. *See Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-55 (11th Cir.
 26 1982); *McKeen-Chaplin v. Franklin Am. Mortg. Co.*, 2012 U.S. Dist. LEXIS 179635, at *6 (N.D.
 27 Cal. Dec. 19, 2012); *Yue Zhou v. Wang's Rest.*, 2007 U.S. Dist. LEXIS 60683, at *2-4 (N.D. Cal.
 28 Aug. 8, 2007). *Accord Stevens v. Safeway Inc.*, 2008 U.S. Dist. LEXIS 17119, at *12-13 (C.D.

1 Cal. Feb. 25, 2008).

2 14. The proposed Settlement is fair, adequate, and reasonable and therefore approved.
 3 The Court directs that the Settlement be consummated in accordance with the terms and
 4 conditions set forth in the Settlement Agreement. The Settlement Agreement is hereby
 5 incorporated by reference.

6 **Exclusions from the Settlement**

7 15. No class member has requested exclusion from the settlement. *See Gomez Decl.*
 8 ¶ 14.

9 **Attorneys' Fees and Costs**

10 16. Under Federal Rules of Civil Procedure 23(h)(1) and Rule 54(d)(2), Plaintiff in
 11 this class action has moved for an award of attorneys' fees and costs and service award. Pursuant
 12 to Rule 23(h)(3), the Court must make findings of fact and state its conclusions of law.

13 17. This class action settlement resolves a wage-and-hour dispute on a class-wide
 14 basis.

15 18. The Court's May 14, 2020 order granted preliminary approval of the class-wide
 16 settlement agreement, an agreement which gives the Court discretion to award Class Counsel
 17 attorneys' fees of up to twenty five percent (25%) of the \$135,000 Gross Settlement Value, i.e.,
 18 \$33,750, and reimbursement of reasonable litigation expenses, with the total fees and costs not to
 19 exceed \$38,750. *See Settlement Agreement*, ECF No. 14, at ECF pages 6 and 10, §§ 7 and 14.
 20 The Settlement Agreement provides that any of those requested amounts that the Court does not
 21 approve shall be added to the Net Settlement Amount to be distributed to the Class. *See id.* at
 22 ECF page 6, § 7.

23 19. Rule 23(h) of the Federal Rules of Civil Procedure provides: "In a certified
 24 class action, the court may award reasonable attorney's fees and nontaxable costs that are
 25 authorized by . . . the parties' agreement." The Rule further provides that "[a] claim for an award
 26 must be made by motion under Rule 54(d)(2)," notice of which must be "directed to class
 27 members in a reasonable manner" and that the Court "must find the facts and state its legal
 28 conclusions under Rule 52(a)." Fed. R. Civ. P. 23(h)(1) & (3). In turn, Rule 54(d)(2) requires a

1 claim for fees to be made by motion, and specifies its timing and content, including, in relevant
 2 part, “the grounds entitling the movant to the award” and “the amount sought.” Fed. R. Civ. P.
 3 54(d)(2)(B).

4 20. Plaintiff filed his Motion for Award of Attorneys’ Fees and Costs and Service
 5 Award on July 20, 2020 (ECF No. 28), which was 14 days before the deadline for objections. The
 6 deadline for objections was August 3, 2020. *See* Gomez Decl. at Ex. A (Class Notice), ECF page
 7 11. That complied with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994-95 (9th
 8 Cir. 2010) (“*In re Mercury*”). *See also Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at
 9 *80 (C.D. Cal. Nov. 23, 2011) (applying *In re Mercury* and holding that the filing of a fee petition
 10 one week before the objection deadline comported with due process).

11 21. When counsel recovers a common fund that confers a “substantial benefit” on a
 12 class of beneficiaries, counsel is “entitled to recover their attorney’s fees from the fund.” *Fischel*
 13 *v. Equitable Life Assurance Soc’y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *Taylor v.*
 14 *Meadowbrook Meat Co., Inc.*, 2016 WL 4916955, at *5 (N.D. Cal. Sept. 15, 2016).

15 22. When “the settlement produces a common fund for the benefit of the entire class,
 16 courts have discretion to employ either the lodestar method or the percentage-of-recovery
 17 method” of calculating attorneys’ fees awards. *In re Bluetooth Headset Prods. Liab. Litig.*, 654
 18 F.3d 935, 942 (9th Cir. 2011).

19 23. Under the percentage-of-the-fund method, it is appropriate to base the percentage
 20 calculation on the gross settlement amount. *See generally Boeing v. Gemert*, 444 U.S. 472, 479,
 21 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026,
 22 1027 (9th Cir. 1997). Indeed, “[w]here the settlement involves a common fund, courts typically
 23 award attorney’s fees based on a percentage of the total settlement.” *Taylor v. Meadowbrook*
 24 *Meat Co., Inc.*, 2016 WL 4916955, at *5 (N.D. Cal. Sept. 15, 2016).

25 24. The Court adopts the percentage-of-the-fund approach here and finds that the fee-
 26 and-expense amount is reasonable. The Ninth Circuit has stated that “25 percent of the fund [i]s
 27 the ‘benchmark’ award that should be given in common fund cases.” *Six (6) Mexican Workers v.*
 28 *Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). That said, “the exact percentage

varies depending on the facts of the case, and in ‘most common fund cases, the award exceeds that benchmark.’” *Johnson v. General Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at *20 (C.D. Cal. June 17, 2013) (quoting *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010)). Thirty percent is within the “usual range.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). *See also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (stating that “nearly all common fund awards range around 30%”). *See also Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir. 2003) (affirming 33% fee award); *Pacific Enterprises*, 47 F.3d 373, 379 (9th Cir. 1995) (same). When the Court awards fees above or below the benchmark, the “record must indicate the Court’s reasons for doing so.” *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, at *44 (N.D. Cal. Jan. 26, 2007) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000)).

25. This settlement confers substantial monetary benefits, including a Gross Settlement Fund of \$135,000. The requested fee award of \$33,750 represents 25% of that amount.

26. In terms of a lodestar cross-check, the attorneys’ fees requested, \$17,500, is about 67% of the lodestar amount of \$50,189.00. *See* ECF No. 28-1 at ECF page 8, lines 2-5. The Court finds that Class Counsel’s hours and hourly rates are reasonable. The fact that the requested fee award results in a “negative multiplier” supports a finding that the requested percentage of the fund is reasonable and fair.

27. Class counsel also are entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R. Civ. P. 23(h); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency matters.); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving reasonable costs in class action settlement). Costs compensable under Rule 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “The prevailing view is that expenses are awarded in addition to the fee percentage.” *Jefferson v. H&M Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875 at *9 (C.D. Cal. Jan. 7, 2013) (quoting 1 Alba Conte, *Attorney Fee Awards* § 2:08 at 50-51). To date, Plaintiff’s counsel have advanced all costs incurred in this case. Plaintiff’s counsel’s total

1 incurred litigation expenses were \$5,875.75, and do not include the modest, but real, expenses
 2 incurred subsequently. *See* ECF No. 28-1 at ECF page 8, lines 16-19. These costs are reasonable,
 3 and pursuant to the settlement, the reimbursement amount requested, \$5,000, is less than that
 4 amount, which supports a finding that the amount requested is reasonable.

5 **Payment to the LWDA**

6 28. The Court approves payment to the LWDA in the amount of \$2,500. The
 7 settlement's allocation of payment of \$2,000 in connection with settlement of the PAGA claims
 8 (75% of which shall be paid to the LWDA and 25% of which shall be paid to the Settlement Class
 9 members as part of the Net Settlement Amount) reflects a reasonable valuation of the PAGA
 10 claims relative to the other claims in the suit, and is in line with PAGA payments in other
 11 settlements that courts have approved. *See e.g., Visceral v. Mistras Group, Inc.*, 2016 U.S. Dist.
 12 LEXIS 140759, at *25-*31 (N.D. Cal. Oct. 11, 2016) (Chen, J.) (finding that, in the context of a
 13 \$6 million settlement, a PAGA payment of \$20,000 was reasonable); *Franco v. Ruiz Food Prods.,*
 14 *Inc.*, 2012 U.S. Dist. LEXIS 169057, at *41-*42 (E.D. Cal. Nov. 27, 2012) (finding that, in the
 15 context of a \$2.5 million settlement, a PAGA payment of \$10,000 was reasonable and in line with
 16 settlement approval of PAGA awards in other cases) (citing cases). *See also Thurman v. Bayshore*
 17 *Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1148 (2012) (discussing the "general rule" regarding
 18 the 75/25 split).

19 **Payment to the Settlement Administrator**

20 29. The Court approves payment to CPT Group, Inc. of \$9,250 for its administration
 21 of the notice and settlement. *See* Gomez Decl. ¶ 18. This amount is significantly less than the
 22 amount estimated in the Settlement Agreement. *See* Settlement Agreement § 7.

23 **Service Award**

24 30. The Settlement Agreement authorizes the Court to award a service award to
 25 Plaintiff Jane Roe in the amount of \$10,000 for her service to the class. *See* Settlement
 26 Agreement § 6. It is within the Court's discretion whether to award such payments and in what
 27 amount. *See id.* at §§ 8, 10.

28 31. The requested service award to Plaintiff Jane Roe in the amount of \$10,000.00 is

1 warranted for her service to the class.

2 **Cy Pres**

3 32. The settlement provides: “No sooner than 180 days after the final Cash Pool
4 Payments are distributed to the Settlement Class Members, the value of any uncashed checks
5 shall be distributed to the Saint Francis Center of Redwood City, or if that entity is not approved
6 by the Court, The Justice and Diversity Center of the Bar Association of San Francisco (a public
7 interest law non-profit organization) or if that entity is not approved by the Court, the American
8 Bar Foundation, or if that entity is not approved by the Court, another appropriate recipient that
9 the Court may designate at the time of final approval. This paragraph regarding the disposition of
10 uncashed checks may be modified by the Court in its discretion.” Settlement Agreement § 13.

11 33. The *cy pres* doctrine allows a court to distribute unclaimed or non-distributable
12 portions of a class action settlement fund to the ‘next best’ class of beneficiaries.” *Nachshin v.*
13 *AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011) (quoting *Six (6) Mexican Workers v. Ariz. Citrus*
14 *Growers*, 904 F.2d 1301, 1307–08 (9th Cir. 1990)). “*Cy pres* distributions must account for the
15 nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the interests of
16 the silent class members, including their geographic diversity.” *See id.*

17 34. “Not just any worthy recipient can qualify as an appropriate *cy pres* beneficiary.”
18 *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). To avoid the “many nascent dangers to
19 the fairness of the distribution process,” we require that there be “a driving nexus between
20 the plaintiff class and the *cy pres* beneficiaries.” *Id.* (quoting *Nachshin*, 663 F.3d at 1038).
21 “A *cy pres* award . . . must not benefit a group too remote from the plaintiff class . . .” *Id.*
22 (quoting *Six Mexican Workers*, 904 F.2d at 1308).

23 35. The Court finds that there is a driving nexus between the plaintiff class and the
24 Saint Francis Center of Redwood City, which provides food, clothing, and other essential
25 services for working poor families.

26 36. The Settlement Administrator shall distribute any *cy pres* payments to the Saint
27 Francis Center of Redwood City, with the following exception: Payments for the settlement class
28 members for whom the Settlement Administrator lacks mailing addresses and/or whose notice the

1 Settlement Administrator deemed undeliverable, *see* Gomez Decl. ¶¶ 10-12 shall be submitted by
2 the Settlement Administrator to the California State Controller's Office pursuant to the
3 procedures of the State of California's Unclaimed Property Law.

4 **Conclusion**

5 37. In accordance with the findings above, from the Gross Settlement Fund of
6 \$135,000, the Court orders an award of \$33,750 in attorneys' fees and \$5,000 in incurred
7 litigation costs to The Tidrick Law Firm LLP, a service award to Plaintiff Jane Roe in the amount
8 of \$10,000, payment of \$9,250 to the settlement administrator, CPT Group, Inc., and the
9 remainder to be distributed among the Class Members as specified in the Settlement.

10 38. The Settlement Administrator shall distribute the settlement funds as specified in
11 in accordance with the Settlement Agreement as modified herein.

12 39. The above-titled action is hereby dismissed, and the claims are released as
13 provided in the Settlement Agreement. Without affecting the finality of this final order and
14 judgment in any way, this Court retains jurisdiction over: (a) effectuating and implementing the
15 Settlement Agreement and its terms; (b) supervising all aspects of the administration of the
16 Settlement Agreement; (c) determining whether, in the event that an appeal is taken from any
17 aspect of this final order and judgment, whether to require the appellant to post a bond or provide
18 other security, and such other matters as the Court may order; (d) enforcing and administering the
19 Settlement Agreement, including any releases executed in connection therewith, and the
20 provisions of this final order and judgment; (e) adjudicating any disputes that arise under the
21 Settlement Agreement; and (f) any other matters related or ancillary to the foregoing.

22 40. The Court hereby enters judgment in accordance with the foregoing. This
23 Judgment is a final judgment in the suit. Pursuant to Rule 54(b) of the Federal Rules of Civil
24 Procedure, the Court expressly finds that there is no just reason for delay. This final order and
25 judgment shall be deemed a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil
26 Procedure. The Court directs Judgment and immediate entry by the Clerk of the Court. The Clerk
27 shall close the file.

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1 It is so ORDERED, ADJUDGED, AND DECREED.

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3 DATE: _____, 2020.

4 The Honorable Laurel Beeler
5 United States District Court
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